

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-344

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In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

JOSE ROMERO

-vs-

WILLIAM H. FAUVER, et al,  
Defendants.

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\* \* \* \*

FRIDAY, JANUARY 9, 2009

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above  
5 matter taken by Theresa O. Mastroianni, Certified  
6 Court Reporter, license number 30X100085700, and  
7 Notary Public of the State of New Jersey at the  
8 United States District Court House, One Gerry Plaza,  
9 Camden, New Jersey, 08102, commencing at 10:36 AM.  
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A P P E A R A N C E S:

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ATTORNEYS FOR THE DEFENDANTS

1 JUDGE BISSELL: Now reopening the  
2 proceedings in the case of Jose Romero, docket number  
3 08-344.

4 Mr. Romero was housed in Trailer Four  
5 in the course of this lockdown.

6 This opinion/report is being issued  
7 pursuant to the directives of the Order of Reference  
8 to a Special Master and the Special Master's  
9 Agreement and the guiding principles of law which  
10 underlie this decision to be applied to the facts  
11 upon which it is based as set forth in the jury  
12 instructions in the Walker and Mejias jury charges to  
13 the extent applicable to the allegations of Mr.  
14 Romero.

15 As finalized after review under Local  
16 Civil Rule 52.1, this transcript will constitute the  
17 written report required under paragraph seven of the  
18 Order of Reference to a Special Master.

19 Mr. Romero's allegations also relate to  
20 events allegedly perpetrated upon him by SOG officers  
21 when they were employed to extract inmates from  
22 Trailer Number Four for purposes of the search during  
23 the lockdown.

24 He describes the events as follows at  
25 various locations in the transcript from pages 23

1 through 32. And I will use some of those segments  
2 here to describe the events in his own words.

3 "Question: Did someone tell you to lie  
4 face down prior to the arrival of SOG?

5 "Answer: Yes, the officers did. They  
6 said get on your bunk face down, hands behind your  
7 head, ankles crossed, feet crossed at the ankles.

8 "Question: Which officers told you  
9 that?

10 "Answer: Buganski and DuBois.

11 "Question: Okay. And did you obey  
12 these orders?

13 "Answer: Yes."

14 He then talks about the arrival of SOG  
15 officers in this cubicle, although he's not certain  
16 of exactly how many, and the testimony picks up as  
17 follows:

18 "Question: Tell us what happened.

19 "Answer: When they got to my cubicle?

20 "Question: Yes.

21 "Answer: When they got to my cubicle,  
22 they searched the guy on the top bunk first and sent  
23 them out, and then they told me to get up, keep my  
24 head down, and put my hands up against the locker.

25 "Question: Did you obey that order?

1 "Answer: Yes.

2 "Question: What happened next?

3 "Answer: After that, he searched me.

4 Then he said when I tell you to turn around, you turn  
5 around, and you take your shirt off and you start  
6 stripping. He said but at no moment will you raise  
7 your head to look up. So when I turned around, I was  
8 about to take my shirt off, you know, I had to lift  
9 my head up because I had to take my T-shirt off, you  
10 know, and at that point, that's when he was like  
11 didn't we tell you not to raise your head up? You  
12 can't follow orders or whatever. And then he pushed  
13 me against the locker and he noticed that I had a  
14 crown on my chest. And he said you're a Latin King  
15 member, so you're hard-headed anyway.

16 "So he forearmed me in my chest against  
17 the locker and then he was, like, turn back around  
18 and face the locker. And that's when he shoved me  
19 against the locker and my face and part of my chest  
20 hit the locker. And he's telling me, you know,  
21 you're a Latin King member and I said no. And he  
22 started elbowing me in my lower back. And then the  
23 other cop that's behind him, he's trying to say,  
24 like, stop fighting. How can I fight him? This guy  
25 is big, I'm so small.

1 "Question: When was it that he  
2 identified this crown?

3 "Answer: When I took my T-shirt off  
4 and he started confronting me about me raising my  
5 head.

6 "Question: Mr. Romero, do you, in  
7 fact, have a tattoo on your chest?

8 "Answer: Yes.

9 "Question: And what is that crown?

10 "Answer: It's a crown, royal crown.  
11 That's what my wife and son's name mean in Italian.

12 "Question: Does that crown have  
13 anything to do with membership in a gang?

14 "Answer: Not as far as I know, no.

15 "Question: Have you ever been a member  
16 of any gang?

17 "Answer: No.

18 "Question: So then I want to go back  
19 to after he saw the crown and accused you of being a  
20 gang member and identified you as being tough anyway.  
21 He then pushed you against the locker; is that  
22 correct?

23 "Answer: Um-hum.

24 "Question: Okay. Let's take it right  
25 from there. Pushed you up against the locker and

1 started to assault you?

2 "Answer: Yes, he put his forearm on my  
3 chest and was accusing me of being a liar, that I was  
4 a gang member, and I thought I was tough anyway  
5 because I raised my head.

6 "Question: And how many times -- you  
7 said he put his elbow against your chest?

8 Answer: Um-hum.

9 Question: Did he -- his forearm  
10 against your chest. How many times -- did he strike  
11 you, did he hit you?

12 "Answer: No, he put his forearm, like,  
13 on my chest and as he's talking, he's pushing, like  
14 letting me know, you know, intimidating.

15 "Question: Okay. And then what  
16 happened?

17 "Answer: Then after that he was like  
18 turn around, put your hands up against the locker.

19 "Question: And did you obey that  
20 order?

21 "Answer: Yes, I did.

22 "Question: Did you say anything to  
23 him?

24 "Answer: No, I didn't.

25 "Question: And what happened after you



1 turned around --

2 "Answer: I turned around and put my  
3 hands on the locker. He was telling me I know you're  
4 lying to me, that you are a member, you know, you're  
5 tough. So that's when he put his forearm against my  
6 back again and pushed me against the locker. And  
7 he's like saying I know you are, I know you are. And  
8 that's when he started hitting me in my lower back.

9 "Question: How many times were you hit  
10 in your lower back?

11 "Answer: Like three, four times.

12 "Question: With what were you hit, if  
13 anything?

14 "Answer: With his elbow and like  
15 forearm.

16 "Question: At any time did the officer  
17 use any baton or stick or night stick?

18 "Answer: No.

19 "Question: Was this the only officer  
20 that struck you?

21 "Answer: Yes.

22 "Question: Now, can you tell me, did  
23 you -- can you describe the pain, if anything, that  
24 you felt when he was striking you in the back?

25 "Answer: Well, it was a striking pain.

1 "Question: And did you -- were you cut  
2 in any way as a result of this assault?

3 "Answer: No, just bruised.

4 "Question: Were you hit in any other  
5 parts of your body other than your lower back?

6 "Answer: No, just like hurting the  
7 shoulder when he pushed me up against the locker.  
8 That's about it.

9 "Question: Was there any blood  
10 involved?

11 "Answer: Not that I can -- because  
12 there was no cuts.

13 "Question: How long did this -- how  
14 long did these four or five hits take?

15 "Answer: Probably -- I can't really  
16 say, probably within a minute span or two minute,  
17 because he was talking to me at the time he was doing  
18 it, so...

19 "Question: What was he saying to you?

20 "Answer: He was accusing me of being a  
21 gang member.

22 "Question: And after the assault  
23 stopped, what happened?

24 "Answer: Well, after that he -- they  
25 strip searched me and then he passed me on to the

1     dude that was standing behind him to take me outside.

2                   "Question: What did that person --  
3     what, if anything, did that person do?

4                   "Answer: Well, he turned me around  
5     because he said put your hands behind your back, and  
6     held me like from the neck bent over, and he passed  
7     me over to the other guy, and the other guy grabbed  
8     me in head lock, and he's dragging me out of the  
9     wing. As we coming out of the wing it's like a pole,  
10    and he tries to run my head against the pole.

11                  "Question: And did he succeed?

12                  "Answer: No, he didn't.

13                  "Question: Why not?

14                  "Answer: Because I put my hand up so  
15    he wouldn't ram my head against the pole.

16                  "Question: Were you injured in any way  
17    by this officer?

18                  "Answer: That grabbed me by the neck?

19                  "Question: Yes.

20                  "Answer: No.

21                  The problem of gangs in a prison, of  
22    course, is well-known and was at the time. I do not  
23    find it unreasonable under all of the circumstances  
24    that the SOG officer extracting Mr. Romero from the  
25    cell would have undertaken to interrogate him as to

1 whether he was, in fact, a Latin King or other gang  
2 member. The tattoo might well have been an  
3 indication of that, although we don't know the extent  
4 of this officer's experience in this regard.

5 However, I do determine here that a certain level of  
6 force and effort by a prison guard, either to  
7 determine whether a person is a gang member or to  
8 impress upon that person that this is something to be  
9 taken very seriously, would well be appropriate in a  
10 circumstance such as this, other than it might be  
11 with a different sort of prisoner who exhibited no  
12 indicia of potential gang affiliation at all.

13 I also find that under the  
14 circumstances the striking of Mr. Romero in the back  
15 was not excessive, nor did it inflict any significant  
16 pain of any sort. Indeed on cross-examination these  
17 actions by the officer were sometimes described as  
18 pushing or pinning as opposed to actual striking with  
19 the arm or elbow. I find that those strikes were not  
20 particularly severe, that they were appropriate under  
21 these circumstances either for interrogation as to  
22 whether this person was, indeed, a Latin King member  
23 or to enforce and impress upon Mr. Romero that the  
24 officers would be vigilant regarding gang membership  
25 or activity here.

1           This is a fairly close case, but in  
2 light of the considerations that I've mentioned above  
3 concerning what was at least a legitimate concern by  
4 the SOG officer that Mr. Romero might be a gang  
5 member, and in light also of the minimal force  
6 employed for a very short duration inflicting no  
7 injuries of any credible sort, I find that this  
8 plaintiff has not sustained his burden of  
9 establishing that excessive force was employed upon  
10 him in this incident in his cell prior to and during  
11 his extraction from the cell for purposes of removal  
12 to the gym and the search of his unit, Trailer Number  
13 Four.

14           Finally, although not every item of  
15 evidence has been discussed in this opinion/report,  
16 all evidence presented to the Special Master was  
17 reviewed and considered. For the reasons set forth  
18 above, I recommend in this report that the district  
19 court enter an order and judgment of no cause for  
20 action with regard to Jose Romero.

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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XI0857  
Date: January 15, 2009

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